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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2017 ND 161

In the Matter of the Application for
Disciplinary Action Against Nicole E.
Foster, a Person Admitted to the Bar
of the State of North Dakota

Disciplinary Board of the Supreme Court
of the State of North Dakota,

Petitioner

v.

Nicole E. Foster,

Respondent

Nos. 20170150-20170151

Application for Discipline.

DISBARMENT ORDERED.

Per Curiam.

[¶1] The Court has before it the findings of fact, conclusions of law and recommendations of the hearing panel recommending Nicole E. Foster be disbarred from the practice of law for violation of N.D.R. Prof. Conduct 1.3, 1.4, 1.5, and 1.16. We disbar Foster, and we order her to pay the costs and expenses of the disciplinary proceeding in the amount of \$250; to reimburse the North Dakota Client Protection Fund for any payments made to clients on her behalf; and to pay restitution to client Michael Kostick.

[¶2] Foster was admitted to practice law in North Dakota on October 4, 2002. On May 8, 2015, Foster was placed on interim suspension. *See Disciplinary Board v.*

Foster, 2015 ND 143, 863 N.W.2d 241. She was disbarred in *Disciplinary Board v. Foster*, 2017 ND 113, 894 N.W.2d 378. The two formal matters forming the basis of the petition for discipline in this matter arise out of the same circumstances as outlined in *Foster*, 2017 ND 113, 894 N.W.2d 378.

[¶3] In discipline file number 5946-W-1602, Michael Kostick paid Foster \$2,500 to represent him in a criminal matter and in a related administrative matter before the North Dakota Department of Transportation. Foster was not prepared for Kostick's administrative hearing. She lacked knowledge of the facts of the case which contributed to an adverse decision. Following the administrative hearing, Foster abandoned her representation of Kostick and ceased all communication with him. In the criminal matter, Foster failed to notify the client of a pretrial conference occurring after the administrative hearing at which he was required to appear. A bench warrant was issued for the client after both he and Foster failed to appear at the pretrial conference. The client was required to re-post bail. Foster failed to refund unearned fees to Kostick.

[¶4] A petition for discipline was served on Foster. Foster failed to answer the petition, and she is in default. The charges in the petition for discipline are deemed admitted under N.D.R. Lawyer Discipl. 3.1(E)(2).

[¶5] The hearing panel concluded Foster violated N.D.R. Prof. Conduct 1.3, Diligence, by failing to be diligent in handling her clients' cases; 1.4, Communication, by failing to make reasonable efforts to keep the clients reasonably informed about their respective matters and failing to adequately communicate with them; 1.5, Fees, by collecting unreasonable fees compared to the amount of work done for the clients; 1.16, Declining or Terminating Representation, because after Foster abandoned Kostick, she did not return his file or unearned fees.

[¶6] The hearing panel considered the aggravating factors under N.D. Stds. Imposing Lawyer Sanctions 9.22 of a prior discipline history, dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the

practice of law. The hearing panel considered the mitigating factor under N.D. Stds. Imposing Lawyer Sanctions 9.23 of personal or emotional problems. The hearing panel recommended Foster be disbarred, that she reimburse the North Dakota Client Protection Fund for any payments made to clients on her behalf; that she pay \$2,500 restitution to Michael Kostick; and that she pay \$250 for the costs and expenses of these disciplinary proceedings.

[¶7] **ORDERED**, that the findings of fact, conclusions of law, and recommendations by the hearing panel is accepted.

[¶8] **IT IS FURTHER ORDERED**, that Nicole E. Foster is DISBARRED from the practice of law in North Dakota effective immediately.

[¶9] **IT IS FURTHER ORDERED**, that Foster pay restitution to Michael Kostick in the amount of \$2,500 within 90 days of entry of judgment.

[¶10] **IT IS FURTHER ORDERED**, that Foster pay the costs and expenses of these disciplinary proceedings in the amount of \$250, payable to the Secretary of the Disciplinary Board, 300 East Boulevard Avenue, Bismarck, North Dakota, 58505-0530, within 90 days of entry of judgment.

[¶11] **IT IS FURTHER ORDERED**, that Foster make restitution to the North Dakota Client Protection Fund for any amounts paid now or in the future on her behalf within 90 days of entry of the judgment in this matter or the payment made by the Client Protection Fund, whichever is sooner.

[¶12] **IT IS FURTHER ORDERED**, that any reinstatement is governed by N.D.R. Lawyer Discipl. 4.5 and cannot occur until at least five years from the effective date of disbarment and compliance with the conditions of this order.

[¶13] **IT IS FURTHER ORDERED**, that Foster must comply with N.D.R. Lawyer Discipl. 6.3 regarding notice.

[¶14] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Lisa Fair McEvers
Daniel J. Crothers
Jerod E. Tufte